

1 but I don't know for sure. Correct.

2 Q Do you have any reason why --

3 well, you don't even recognize their logo, so  
4 you can't confirm whether, in fact, they  
5 appear in that far right column. Is that  
6 right?

7 A Number one, I don't see the OLN  
8 logo. I don't think Adventure TV is OLN. And  
9 that G I thin is GOL TV, but it could be Golf  
10 Channel.

11 Q Okay. At any rate, can you agree  
12 with me that you don't have OLN and Golf  
13 listed in the middle category there with NFL  
14 Network?

15 A They don't appear to be listed;  
16 although, that's where I think they would have  
17 fallen.

18 Q My question was just, are they  
19 listed on this document that was -

20 A I said they don't appear to be.

21 Q Okay. And they're sure not listed  
22 in that most expensive category above Seventy

1 Cents.

2 A That is correct.

3 Q Now, at the time this was prepared  
4 in connection with the Owners meeting in March  
5 of 2006, Comcast was carrying NFL Network at  
6 D2. Correct?

7 A March 2006, they would have been  
8 carrying NFL Network at D2. That's correct.

9 Q Okay. And there was no fight or  
10 argument that had developed yet. Right?

11 A That is correct.

12 Q Okay. If you turn over -- how  
13 about some of the other big cable companies,  
14 Time Warner, Charter, Cablevision, were they  
15 carrying NFL Network at this same time?

16 A Charter was, Time Warner was not,  
17 Cablevision was not.

18 Q If you'll turn over to the page  
19 532 in this same exhibit.

20 A 532, yes, sir.

21 Q Two pages after the one we were  
22 on.

1 A Yes.

2 Q There's a Distribution Plan page  
3 here with subscribers and fee.

4 A Yes.

5 Q Correct?

6 A Yes, that's the heading.

7 Q Okay. And it has the actual  
8 numbers for 2005, because that year was  
9 finished. Right?

10 A Okay. Yes, sir.

11 Q And then projected numbers for the  
12 years after that, including -  
13 (Cough.)

14 Q Is that right?

15 A It appears that's the case, yes.

16 Q Okay. So, for '05, Comcast is  
17 listed here as [REDACTED] subscribers.  
18 Right?

19 A Yes.

20 Q And Time Warner is a big zero?

21 A Correct.

22 Q Charter is a big zero.

1 A Yes.

2 Q And Cablevision is a big zero.

3 Right?

4 A Yes.

5 Q You're not blaming - you, the NFL,

6 when you filed this action - you're not

7 blaming Comcast for those zeroes for those

8 other cable companies in 2005, are you?

9 A No.

10 Q We were a good cable company that

11 was carrying you. Correct?

12 A You were carrying us.

13 Q And why weren't the other cable

14 companies there, Time Warner, Charter, and

15 Cablevision carrying you at that time?

16 A Hadn't negotiated carriage. We

17 were in discussions with at least two of the

18 three. Charter, it appears, might have

19 already -- we had a deal with Charter in '03-

20 04, I believe, and they failed to meet some

21 meltdown targets, and that deal ended up being

22 terminated. It appears that may have happened

1 in '05. I didn't think it did.

2 Q Well, you remember the problem  
3 with Charter is they thought you were too  
4 expensive.

5 A No, I don't think so.

6 Q You disagree with that?

7 A I think that the problem with  
8 Charter was that they had launched us on a  
9 particular level of service, and promised us  
10 additional homes at various points, and they  
11 missed their benchmarks.

12 Q Didn't you, yourself, write in an  
13 email to one of your colleagues that Charter  
14 had decided the NFL Network was too expensive?

15 A I don't know whether I did or not.  
16 I'm sure that you will refresh my recollection  
17 if I did.

18 Q Would you like to see it?

19 A Sure.

20 MR. CARROLL: My team has been  
21 perfect so far, Your Honor.

22 (LAUGHTER.)

1           MR. CARROLL: This is not perfect.  
2    It's my fault, not their's. Let me see if I  
3    can move this along, because we have another  
4    copy of this that, for some reason, was  
5    redacted. Let me -- may I show this to  
6    opposing counsel and see if opposing counsel  
7    has any objection to my showing this to the  
8    witness to confirm that he's got an email that  
9    says this?

10           JUDGE SIPPEL: Surely, go ahead.

11           MR. LEVY: I don't have an  
12    objection to him showing it to the witness, as  
13    long as the witness can -- if you're not going  
14    to mark it, and introduce it, the witness  
15    should be able to tell you the entire context  
16    of what -

17           MR. CARROLL: I didn't mean to  
18    leave it here. I apologize. Is there a Xerox  
19    machine on this floor?

20           JUDGE SIPPEL: The government with  
21    a Xerox machine?

22                           (Laughter.)

1 JUDGE SIPPEL: Yes, we'll get you  
2 copies.

3 MR. CARROLL: If I can get four  
4 copies that would be excellent. Thank you  
5 very much. Let me plod along for a second  
6 while we're doing that.

7 JUDGE SIPPEL: All right. Well, I  
8 can give you copies of this -- do I have it  
9 now? I had them.

10 COURT REPORTER: Are we off the  
11 record?

12 JUDGE SIPPEL: No, we're not off  
13 the record. Keep going. Keep going.

14 BY MR. CARROLL:

15 Q Did the NFL Network have a  
16 reputation among the cable companies,  
17 including Charter, Time Warner, and Cox of  
18 being -- Charter, Cablevision, and Time Warner  
19 of being expensive?

20 MR. LEVY: Objection; calls for  
21 speculation.

22 BY MR. CARROLL:

1           Q       A reputation that you had heard  
2 of, that you had heard that articulated?

3                   JUDGE SIPPEL: Well, I'm going to  
4 sustain the first objection. The second one  
5 is clarified. Go ahead, sir.

6                   THE WITNESS: Did it have -- did I  
7 hear that it had a reputation for being too  
8 expensive?

9                   BY MR. CARROLL:

10           Q       Very expensive is the phrase.

11           A       I would say that they all thought  
12 that it was an expensive channel, but I don't  
13 know reputation, why you're using that word.

14           Q       Do you remember being involved in  
15 preparing another update for the Owners the  
16 following year in 2007 for their March meeting  
17 in Phoenix, in which the description for the  
18 Owners was that NFLN programming was very  
19 expensive to operators?

20           A       I don't recall being involved in  
21 preparation of such -

22                               (Cough.)



1 BY MR. CARROLL:

2 Q Before I show you that, I'd asked  
3 you about Charter on page 532 of Exhibit 302.

4 A Yes.

5 Q Time Warner, do you remember that  
6 Time Warner had objected to the price that the  
7 NFL Network was trying to charge for  
8 distribution?

9 A At this point in time, or that  
10 they objected to the price at later points in  
11 time?

12 Q Oh, at any point in time. Did  
13 Time -- did you ever learn that Time Warner  
14 objected to the price the NFL Network wanted  
15 to charge for its channel?

16 A Time Warner at various times  
17 objected to the price, and objected to being  
18 asked to carry it as a linear channel, among  
19 other things.

20 Q And with respect to the price,  
21 their objection was they thought the price was  
22 too high. Correct?

1           A       They thought the price was too  
2 high at [REDACTED] for a channel with no  
3 games. That's correct, at this point.

4                   JUDGE SIPPEL: What is a linear  
5 channel? Explain what that is.

6                   THE WITNESS: Linear channel means  
7 that when you tune to position 275, or  
8 whatever it is on the dial, you get the  
9 channel, and it's a 24/7 programming stream,  
10 as contrasted to VOD, where you go to a  
11 channel and you get a menu, and you pick what  
12 you want to watch.

13                  JUDGE SIPPEL: Thank you.

14                  BY MR. CARROLL:

15           Q       And with respect to Cablevision,  
16 which is the other cable company that's listed  
17 on page 532 as not carrying NFL Network at  
18 all, had they raised price as one of the  
19 objections they had?

20           A       At this point, or later?

21           Q       At any point in time, sir.

22           A       Yes. They have said that they

1     wanted to negotiate different terms, not  
2     necessarily that they objected to the price  
3     per se.

4           Q       But you understood they wanted to  
5     negotiate lower price terms, not higher.

6           A       I understood that they wanted to  
7     negotiate potentially subscriber rebates, and  
8     any number of things that would have the  
9     effect of decreasing their net cost.

10          Q       So, you understood, in effect,  
11     they thought the price was too high, as well.

12          A       I'm not sure that they -- well, we  
13     may be playing semantic games here. I'm not  
14     sure that they objected to whatever price was  
15     quoted to them, if they got rebates, launch  
16     support, et cetera, that would sort of phase-  
17     in the pricing.

18          Q       They wanted you to offer them a  
19     financial package that had the effect, net  
20     effect of lowering the price.

21          A       Lowering the cost. Yes, sir.

22          Q       Cost meaning the price that they

1 would have to pay you.

2 A Not necessarily the monthly price,  
3 sir, but the cost that they would pay net of  
4 rebates, et cetera. Yes.

5 Q The amount of money they'd be out  
6 of pocket.

7 A That's fine. I would agree with  
8 you on that.

9 Q We got that.

10 MR. CARROLL: Your Honor, may I  
11 approach with what -

12 (Off the record comments.)

13 MR. CARROLL: Okay. I'm going to  
14 mark this, Your Honor. Your courtroom  
15 assistant has been kind enough to make some  
16 copies for us, and I'm going to mark this for  
17 identification as Comcast Exhibit 305.

18 (WHEREUPON, THE DOCUMENT REFERRED  
19 TO WAS MARKED AS COMCAST EXHIBIT  
20 305 FOR IDENTIFICATION.)

21 JUDGE SIPPEL: You'll be happy to  
22 know that she's going to bill it a lot less

1     than \$6.50 an hour, too.

2                   MR. CARROLL:  No doubt.  May I  
3     approach, Your Honor?

4                   JUDGE SIPPEL:  Please, do.

5                   MR. CARROLL:  On this one, if I  
6     could just give you one copy, I think I'll  
7     have enough to go around.  Let me give one to  
8     the witness.

9                   THE WITNESS:  Thank you.

10                  JUDGE SIPPEL:  Can you identify  
11     it?  Let's see what it is we're dealing with.

12                  MR. CARROLL:  This is the exhibit  
13     that I handed Mr. Levy a moment ago, before we  
14     got copies, and asked if there was any  
15     objection to it.  This is Comcast Exhibit 305.

16                  THE WITNESS:  Yes.

17                  MR. CARROLL:  The Bates number is  
18     NFL-E0140967 through 69.  It's a series of  
19     emails.  The email that's the longest on the  
20     first page at the top is an email from Mr.  
21     Hawkins, himself, to others at the NFL, dated  
22     September 18, 2007.

1 JUDGE SIPPEL: September 18, 2007.

2 MR. CARROLL: Yes.

3 JUDGE SIPPEL: So identified.

4 BY MR. CARROLL:

5 Q Now, you remember a moment ago  
6 before we had our technical snafu, Mr.  
7 Hawkins, I had asked you point blank, did you  
8 ever tell anyone that Charter had decided that  
9 the NFL Network was too expensive. Do you  
10 remember that?

11 A Yes.

12 Q Okay. So, here's your email. And  
13 you see that in your email, you're referring  
14 to Charter. You say, "Charter, like other  
15 cable operators, puts its profits ahead of its  
16 customers' interests. It did a deal to phase  
17 into broad NFL Network carriage, then decided  
18 it was too expensive, and breached its deal,  
19 keeping the network on limited distribution  
20 tiers." Have I read your language correctly?

21 A That's exactly what it says.

22 Q Does this refresh your memory

1     that, in fact, you did voice the opinion, in  
2     at least this email, that Charter, when they  
3     breached their deal, according to you, had  
4     decided the NFL Network was too expensive?

5             A       No.

6             Q       It does not refresh your memory.

7             A       Read the sentence, Mr. Carroll.  
8     It says that its deal was too expensive. It  
9     made that decision. It did not, necessarily,  
10    make a decision that the NFL Network was too  
11    expensive.

12            Q       The deal you're describing Charter  
13    is thinking is too expensive is a deal with  
14    whom?

15            A       A deal with the NFL Network, sir.

16            Q       And a deal with the NFL Network to  
17    carry and telecast the NFL Network's  
18    programming.

19            A       That's correct.

20            Q       And, Charter -- you understood  
21    Charter thought that deal was too expensive.

22            A       In other words, providing the

1 subscribers that it had guaranteed to the NFL  
2 Network was going to cost too much out-of-  
3 pocket.

4 Q Meaning -- well, the reason it  
5 would be too much out-of-pocket is the  
6 combination of the distribution you were  
7 requiring, and the per subscriber fee made it  
8 too expensive. Right?

9 A That's correct.

10 Q Exactly the issue, you'll remember  
11 I explained in the opening argument. Do you  
12 remember that?

13 A Well, I remember the argument that  
14 you made, sir, yes.

15 Q And what Charter objected to about  
16 your contract with you, as you're reciting  
17 here, is that when you combined the per  
18 subscriber price you wanted them to pay to the  
19 level of distribution you wanted, and  
20 multiplied them together, then that  
21 combination was too expensive. Correct?

22 A The net combination was too



1 expensive for them given their financial  
2 circumstances, yes.

3 Q And Charter, just so we're clear,  
4 that's the cable operator that's associated  
5 with an NFL Owner, isn't it?

6 A Yes.

7 Q Paul Allen.

8 A Yes.

9 Q Mr. Allen also owns what football  
10 team?

11 A Seattle Seahawks.

12 Q So, this is like one of your own  
13 Owners telling your own network that the  
14 contract terms are too expensive.

15 MR. LEVY: Objection;  
16 argumentative.

17 JUDGE SIPPEL: I'll sustain that.

18 BY MR. CARROLL:

19 Q What was Mr. Allen's relationship  
20 to the team. He owns the team.

21 A Correct.

22 Q And what was his relationship to

1 Charter?

2 A He was a major stockholder and  
3 Chairman.

4 Q Chairman of the company.

5 A Yes.

6 Q And the majority shareholder?

7 A I don't believe so, but he was a  
8 major stockholder.

9 Q Controlling stockholder.

10 A Given that it was probably free  
11 traded, yes.

12 Q Okay. This was quite an  
13 embarrassment to the NFL, wasn't it?

14 A Mr. Allen, as I understand it,  
15 recused himself from matters in consideration  
16 on this. But, yes, we would have liked to  
17 have gotten Charter.

18 MR. CARROLL: You can put that  
19 exhibit to the side, sir.

20 THE WITNESS: Okay.

21 MR. CARROLL: And if you still  
22 have Exhibit 302 handy?

1 THE WITNESS: Yes.

2 BY MR. CARROLL:

3 Q So, we talked about Time Warner,  
4 Charter, and Cablevision as being the other  
5 large cable companies that you had listed on  
6 page 532 that had zero subscribers for NFL  
7 Network in 2005. Correct?

8 A Yes.

9 Q And then this was a distribution  
10 plan that the network had put together for  
11 what it hoped the distribution would be in  
12 years going forward. Correct?

13 A Yes.

14 Q Now, the plan, in addition to  
15 having distribution, also had financial  
16 projections associated with it. And if you'll  
17 turn over two more pages to 534, perhaps you  
18 can identify this as those projections.

19 JUDGE SIPPEL: Which exhibit are  
20 we on now?

21 MR. CARROLL: I'm sorry, Your  
22 Honor. We're still on Exhibit 302. That's

1 the exhibit right in front of you.

2 JUDGE SIPPEL: Right. I have it.

3 And what page are we turning to?

4 MR. CARROLL: 534.

5 JUDGE SIPPEL: All right.

6 MR. CARROLL: Which should be  
7 headed, Your Honor, "NFL Network Projection."

8 JUDGE SIPPEL: I have it.

9 MR. CARROLL: And this page is in  
10 dollars.

11 THE WITNESS: Yes.

12 BY MR. CARROLL:

13 Q And, am I correct, Mr. Hawkins,  
14 that on this page, the NFL Network has set  
15 forth its projection for what it hopes to earn  
16 in the future years from distribution of NFL  
17 Network?

18 A I believe that's correct, yes.

19 Q And if you go just passed the  
20 midway point on this page, there's an item  
21 that says "EBITDA", E-B-I-T-D-A. Do you see  
22 that?

1 A Yes, sir.

2 Q What's that item?

3 A Earnings Before Interest, Taxes,  
4 Depreciation, and Amortization.

5 Q Sometimes referred to as net  
6 income, for short?

7 A You'd have to go back to my  
8 accounting, to accounting for me to be able to  
9 say that. I've always referred to it as  
10 EBITDA.

11 Q It's a profit measure.

12 A It is a cash flow measure, yes.

13 Q Well, there's a cash flow measure  
14 underneath it. Do you see that?

15 A Yes, I do.

16 Q Because cash flow, you have to  
17 take out depreciation, because it's a non-cash  
18 item. Right?

19 A Uh-huh.

20 Q You have to say yes or no.

21 A Yes.

22 Q Okay. So, the EBITDA number is a

1 kind of bottom line profit number that  
2 includes some cash items, and then you have  
3 your cash flow item after it. Right?

4 A The way it's set up, it appears  
5 that's the case.

6 Q Okay. And the EBITDA number shows  
7 that the NFL's projection was that it -- this  
8 is in millions, these numbers. Right?

9 A Yes.

10 Q So, you start out in '05 with a [REDACTED]  
11 [REDACTED] loss in '06, and then  
12 start moving forward with [REDACTED]  
13 [REDACTED] each year, [REDACTED] in '07, [REDACTED]  
14 [REDACTED] in '08, going [REDACTED]  
15 [REDACTED] in 2011. Correct?

16 A Yes.

17 Q These are yearly projected profit  
18 numbers. Right?

19 A Yes.

20 Q And, underneath that, we have the  
21 cash flow on both a year-basis, and a  
22 cumulative basis. Correct?

1           A       Sir, may I just qualify, yearly  
2     projected profit numbers, yearly projected  
3     EBITDA numbers.

4           Q       Fine.

5           A       Thank you.

6           Q       And then underneath that -

7           A       And cash flow is -- yes. Cash  
8     flow is below that.

9           Q       Right. Both on an annual, and a  
10    cumulative basis.

11          A       That is correct.

12          Q       So, the NFL Network was projecting  
13    that if things went its way on pricing and  
14    distribution, by 2011 it would have a  
15    cumulative cash flow of [REDACTED]  
16    Correct?

17          A       Correct.

18          Q       And how much of that was it hoping  
19    to get out of the coffers of the cable  
20    companies, such as Comcast?

21          A       You'd have to take a look at the  
22    underlying detail on the projections.

1 Q Who was going to pay that [REDACTED]  
2 [REDACTED] that you were hoping to earn? Where  
3 was it coming from?

4 A It's going to come from the  
5 companies that agreed to carry the NFL  
6 Network, some cable, some satellite, some  
7 telecast.

8 Q And where were they going to get  
9 that money from?

10 A From charges to subscribers.

11 Q And the projection that we're  
12 looking at for the NFL Network here, is this  
13 for the network with just the eight games?

14 A I don't know.

15 Q Was there any -

16 A I would assume so, sir, because  
17 this is within the term of the NFL's current  
18 agreement, current television agreements.

19 Q So, by taking the eight games -  
20 and am I right that those eight games, when  
21 they were packaged this way in 2006 - prior to  
22 then, they had been available free on



1 broadcast television. Right?

2 A Seven of the eight, yes.

3 Q Seven of the eight. Okay. Which  
4 means that people could watch those games  
5 where the networks aired them for free.  
6 Correct?

7 A They could watch those games if  
8 they watch TV over the air for free. That's  
9 correct.

10 Q Okay. And under this proposal,  
11 over the time period ending in 2011, the  
12 subscribers to satellite, and Comcast, and  
13 other cable companies would have paid, under  
14 your proposal, [REDACTED] for those games,  
15 and the other programming on the NFL Network.  
16 Correct?

17 A The cable companies would have  
18 paid, and those payments would have been  
19 derived from subscriber fees. That's correct;  
20 cable, and satellite, and television  
21 companies.

22 Q So, you weren't surprised that you

1 got resistance from the cable companies to  
2 this kind of a plan, were you?

3 A Resistance? I would say that we  
4 expected these to be fairly intensive  
5 negotiations, to say the least, in order to  
6 attain -

7 Q Because you knew that cable  
8 companies like to keep their costs down.

9 A Among other things, yes.

10 Q But you don't disagree with that,  
11 that cable companies, and satellite companies,  
12 like to keep their costs down so they don't  
13 have to charge the subscribers as much.

14 A That's correct.

15 Q Okay.

16 A Well, they like to keep their  
17 costs down. I wouldn't necessarily agree with  
18 the latter part of your characterization, sir.

19 Q And then, remember I had asked you  
20 that question a few moments ago about the  
21 presentation to the Owners that described your  
22 programming as very expensive. Do you